

WASHINGTON, D. C. 20505

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Office of Legislative Counsel

## OLC RECORD COPY

Mr. James M. Frey  
Assistant Director for  
Legislative Reference  
Office of Management and Budget  
Washington, D.C. 20503

Dear Mr. Frey:

I am writing to express the concerns of the Central Intelligence Agency regarding S. 2787, the "Contract Disputes Act of 1978." The bill would establish a procedure for the resolution of claims and disputes relating to Government contracts awarded by Executive agencies. The policy enunciated by the bill--that contractor claims be resolved by mutual agreement in lieu of litigation, if feasible--is laudable. However, as outlined below, several provisions of the bill would lessen the possibility of prompt and less-formal resolution of contractor claims.

Proposed section 7 of the bill would increase from 30 to 90 days the time in which a contractor may appeal the decision of the contracting officer. This proposal fails to take into account the realities of the procurement process, whereby the contracting officer issues his decision only after the differences between the Government and the contractor have been thoroughly discussed and evaluated. Thus, the 30 days currently authorized for appeals is more than adequate; and increasing the period to 90 days would only result in unnecessary delay. Likewise, both proposed paragraph 8(f)(1), which would grant a contractor 12 months to appeal a decision of an agency board of contract appeals to the courts, and proposed subsection 10(a), which would permit a contractor to by-pass an agency board of appeals and appeal a contracting officer's decision directly to the courts if he does so within a year, would unnecessarily delay the dispute resolution procedure. The former provision also runs counter to the policy enunciated in the bill of settling claims by means other than litigation. In addition, because the board of appeals would be the surrogate for the head of an agency, the latter provision would permit the contractor to deny an agency head a review of the dispute. This Agency believes that contractors should be required to exhaust their administrative remedies before seeking redress in the courts.

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Similarly, subsections 9(c) and (d) would delay rather than expedite the settlement of small claims. Also objectionable are the provisions of subsection 9(a) which make the small claims procedure available solely at the option of the contractor, and 9(d) which denies the Government the right to appeal to the courts.

In addition, the procedures in this bill which would be established for judicial review of board decisions fail to recognize that a contract dispute could involve sensitive national security information--that is, information classified according to Executive Order or information relating to intelligence sources and methods. It is the statutory responsibility of the Director of Central Intelligence to protect the latter from unauthorized disclosure (50 U.S.C. 403(d)(3)). The bill should provide for in camera proceedings when such information is involved and should make clear that such information may not be made public.

In short, the thrust of the bill is to place disproportionate emphasis on the interests of the contractor as opposed to those of the Government. Its passage would result in forum-shopping; in unwarranted delays in claim settlement, which would be detrimental to the Government; and could lead to security problems. For these reasons, this Agency must object to the changes the bill would make in current procedures for settling contract disputes.

Sincerely,

SIGNED

  
Acting Legislative Counsel

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